IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5142 OF 2007

Shivaji Pawar ....Petitioner
V/s
M/s.Raigad Textiles & Ors ....Respondents.

Mr.D.S.Chandnani i/by M/s.Lexim Associates, Adv. For the petitioner.
Mr.K.S.Dewal, Adv. for respondent Nos. 6 & 7.

CORAM: A.P.DESHPANDE, J.
11/10/07

PC:

The present petitioner is the original plaintiff who instituted a suit against the defendants and sought a declaration that the agreement dated 25.8.03 is null and void. He further sought a declaration that the sale deed dated 2.9.96 executed by defendant No.3 in favour of defendant Nos. 4 and 5 is liable to be quashed and set aside. A further prayer is also made for rendition of accounts besides claiming money decree for Rs.13,80,000/- being share of the plaintiff in the partnership. The suit is of the year 1996. The case was fixed before the trial Court on 20.12.06 and it has come on record that the said date was granted with consent of lawyers of both sides with a view to expeditiously decide the suit. On 20.12.06 an adjournment application came to be filed before the trial Court and the reason stated therein was that the advocate for the plaintiff is busy in the High Court and hence unable to appear for conducting the suit. Stating the said ground prayer for adjournment was made. The application was opposed and the trial Court rejected the application by observing that advocate being busy in another Court is no ground for adjournment. It is further observed in the order that another

advocate by name Shri Narvekar was also appearing in the matter and though present in the Court did not conduct the matter. After rejecting the adjournment application the witnesses for the defendants were discharged. It may not be out of place to state that on 20.12.06 a witness of the defendant was under the cross examination of the plaintiff and the cross examination was to be continued on the said date. The Court then passed an order of no cross, I am informed. As the plaintiff was declined right to further cross examine the witness, defendant Nos. 2 to 7 filed pursis before the trial Court that they do not want to lead any further evidence. An application was moved on 6.1.06 for recalling of the order dated 20.12.06. The said application also came to be rejected. Perusal of the impugned order passed below Ex.255 reveals that the trial Court was disturbed on account of repeated adjournments sought by the plaintiff one pretext or the other. The trial Court has held that he has no power and jurisdiction to summon the witness so as to enable the plaintiff to cross examine him. In the above set of facts learned counsel for the petitioner has submitted that the stakes in the suit are high. The plaintiff is litigating since the year 1996 and the reason for seeking adjournment on 20.12.06 was that the advocate for the plaintiff was busy in the High Court and thus could not attend the proceedings of the suit. Thus the submission is that the client should not unnecessarily suffer even if there is some mistake on the part of counsel. In my view, the reason assigned by the trial Court for refusing adjournment is not proper. The trial Court has also committed patent illegality in holding that the Court has no power to summon witness for further cross examination. In the absence of any specific provision the Court can very well fall back on inherent powers under section 151 of the Code of Civil Procedure, of course, if the same is in furtherance of cause of justice. I am of the clear view that as evidence of the plaintiff is over and the

witness for the defendant is to be further cross examined it would be in the interest of justice to permit the plaintiff to further cross examine the witness. This exercise would go to advance cause of justice and avoid miscarriage of justice. No doubt for the inconvenience caused to the respondents they need to be adequately compensated. As I am of the view that denying a right of further cross examination to the plaintiff would result in miscarriage of justice, writ petition has to be allowed. The impugned orders dated 20.12.06 and 31.3.07 are quashed and set aside. It is declared that the plaintiff shall have right to cross examine the witness for defendant No.2 who was to be further cross examined on 20.12.06. It is further clarified that it shall be open for the defendants to withdraw pursis filed by them closing their evidence and the defendants shall be entitled to lead further evidence. Learned counsel for the petitioner assures this Court that the plaintiff will not seek any adjournment hereafter and shall cooperate the trial Court in expeditious disposal of the suit. This order is subject to condition that the petitioner-plaintiff pays a sum of Rs.20,000/- by way of costs to the defendants which shall be shared by them in equal proportion. Rule made absolute in above terms. Cost to be paid within eight weeks from today. I hope and trust that the trial Court shall proceed to decide the suit as expeditiously as possible and preferably suit be tried on day-to-day basis.

11.10.07